

TENNESSEE GENERAL ASSEMBLY  
FISCAL REVIEW COMMITTEE



**FISCAL NOTE**

**HB 1427 – SB 2576**

January 25, 2016

**SUMMARY OF BILL:** Requires a law enforcement officer to run, at the time of arrest or as soon as possible thereafter, a criminal history background check on the person being arrested using the National Crime Information Center (NCIC), which is run by the Federal Bureau of Investigation (FBI). A copy of the criminal history must be attached to the original warrant and becomes a part of the person's law enforcement record until the disposal of the matter.

The background check must be run and attached to the warrant for all misdemeanors, felonies, summonses issued in lieu of arrest, citations issued in lieu of continued custody, and warrantless arrests.

Requires a court to consider the use of special conditions for any person charged with vehicular assault, vehicular homicide by intoxication, or driving under the influence (DUI); rather than for any person charged with vehicular assault, vehicular homicide by intoxication, aggravated vehicular homicide, or DUI who had a prior conviction for vehicular assault, vehicular homicide by intoxication, aggravated vehicular homicide, or DUI.

Requires a court to impose a special bond condition for any person who is charged with vehicular assault, vehicular homicide by intoxication, aggravated vehicular homicide, or DUI and who has a prior conviction for vehicular assault, vehicular homicide by intoxication, aggravated vehicular homicide, or DUI.

Establishes a procedure for revoking a person's bond. Requires a hearing to be conducted before bond can be revoked.

**ESTIMATED FISCAL IMPACT:**

**Increase Local Expenditures – Exceeds \$6,000/Incarceration\***  
**Exceeds \$124,900\***

**Other Fiscal Impact – Requiring an NCIC background check to be attached to a warrant could be considered dissemination by the FBI. If the FBI considers the practice dissemination, then the FBI could pull Tennessee's access to NCIC. The impact of losing NCIC access would be significant. However, the impact cannot be reasonably determined because of multiple, unknown variables.**

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## Assumptions:

### *Assumptions Relative to Background Checks*

- The Tennessee Bureau of Investigation maintains Tennessee's access to NCIC. It conducts multiple background checks per year for law enforcement purposes. There is no charge for running a background check if it is for law enforcement purposes.
- The FBI has certain guidelines for using background checks. A background check cannot be disseminated.
- Various state and local law enforcement entities have indicated that requiring a background check to be attached to the original warrant could be considered dissemination under the federal guidelines.
- If the FBI determines that the procedure established by the bill is dissemination, then the FBI could pull Tennessee's access to NCIC.
- The TBI ran 1,058,722 background checks through NCIC in 2014. Losing access to NCIC would significantly impact state and local law enforcement operations.
- Fiscal Review cannot reasonably determine the full impact of losing access to NCIC due to multiple, unknown variables.

### *Assumptions Relative to Special Bond Conditions*

- Under current law, a court is required to consider using special bond conditions when a person is charged with vehicular assault, vehicular homicide by intoxication, or DUI and the person has one or more prior convictions for vehicular assault, vehicular homicide by intoxication, aggravated vehicular homicide, or DUI.
- The bill requires a court to impose, rather than consider, a special bond condition in the same scenario, and to consider using special bond conditions when a person is charged with vehicular assault, vehicular homicide by intoxication, aggravated vehicular homicide, or DUI even if the person does not have a prior conviction for vehicular assault, vehicular homicide by intoxication, aggravated vehicular homicide, or DUI.
- The special conditions to be imposed include, but are not limited to:
  - ignition interlock devices;
  - transdermal monitoring devices or other alternative alcohol monitoring devices;
  - electronic monitoring with random alcohol or drug testing; and
  - pretrial residency in an in-patient alcohol or drug rehabilitation center.
- The bill will increase local expenditures (1) for the special conditions required under the bill that an indigent person will not be able to pay for; and (2) for increased time served pretrial after a person's bond is revoked because of a violation of the special condition.
- The bill will result in more defendants having special bond conditions imposed upon them. If they violate a special bond condition, their bond may be revoked after a hearing and they will be remanded to jail awaiting trial.
- The estimated 2016 cost per inmate per day for local jails is \$60.00.
- Fiscal Review cannot reasonably determine how many defendants will violate their special bond conditions. However, Fiscal Review can reasonably assume that the additional time served by the affected defendants will total no less than 100 days.
- The increase in local incarceration costs is assumed to exceed \$6,000 (100 days x \$60.00 per day).

- Statistics from the Department of Correction (DOC) show an annual average of admissions over the last 10 years for vehicular assault, vehicular homicide by intoxication, and aggravated vehicular homicide as follows:
  - Vehicular assault – 34.8 admissions per year;
  - Vehicular homicide by intoxication – 34.7 admissions per year; and
  - Aggravated vehicular homicide – 6.2 admissions per year.
- It is assumed that 10 percent of these admissions are second offenses  $[(34.8 + 34.7 + 6.2) \times 0.10 = 7.57 \text{ admissions}]$ .
- Statistics from the Department of Safety (Safety) show an average of 2,571.4 convictions each year over the past five years for second offense DUI.
- The bill will result in 2,579 defendants  $(2,571.4 + 7.6)$  each year having mandatory special bond conditions imposed. It is assumed that a court already imposes special bond conditions upon one-third  $(2,579 \times 0.33 = 851.1)$  of these defendants.
- A court can require a defendant to pay for the costs of the special bond condition, but a defendant can also declare indigence. If a court finds the defendant is indigent, then the special bond condition would be provided by the local government. Transdermal monitoring, however, would not be provided by a local government because there is a specific statutory provision requiring the defendant to pay the costs and does not include a provision allowing for a finding of indigence. It is assumed that one-half of the 1,728 defendants  $(2,579 - 851)$  affected by the bill are indigent  $(1,728 \times 0.5 = 864)$ . It is assumed that no court will impose transdermal monitoring upon an indigent defendant, as that defendant would have to remain in local custody until trial.
- Fiscal Review cannot reasonably determine what special bond conditions the courts will impose upon the 864 indigent defendants not currently subject to special bond conditions. However, Fiscal Review can reasonably assume that each special bond condition listed above will be imposed upon no less than 20 indigent defendants.
- Rates for ignition interlock devices vary by provider, but Safety sets maximum rates that may be charged. The maximum rates are \$150 for installation, \$100 for monthly monitoring, and \$75 for removal. It is assumed that the cost to install, monitor, and remove an ignition interlock as a special bond condition will be the same as the rates set by Safety.
- It is assumed that the average time between a defendant's bond hearing and trial is one month.
- The time between a bond hearing and trial for vehicular assault, vehicular homicide by intoxication, and aggravated vehicular homicide could be one year or more, but the time between a bond hearing and trial, if any, for a second offense DUI is shorter. Given the number of second offense DUI convictions (2,571) versus the number of admissions for second offense vehicular assault, vehicular homicide by intoxication, and aggravated vehicular homicide (8), it is assumed that the average time is one month.
- It is assumed that the increase in local expenditures for ignition interlock devices for special bond conditions will exceed \$6,500  $\{20 \text{ defendants} \times [\$150 \text{ installation} + (\$100 \text{ monthly monitoring} \times \text{one month}) + \$75 \text{ removal}]\}$ .
- Research shows that the average cost for GPS monitoring of a defendant is approximately \$36 per day. It is assumed that the rate for electronic monitoring of a defendant is the same. Further, the Department of Mental Health and Substance Abuse Services (Mental Health) reports their average cost for an alcohol or drug test is \$15 per

test. Mental Health notes that their rate is likely lower than the average cost for a drug test. It is assumed that the average cost for a drug test is \$20.

- It is assumed that a defendant will be drug or alcohol tested at least twice during the one-month bond period. It is assumed that the increase in local expenditures for electronic monitoring will exceed \$22,400 {20 defendants x [(\$36 per day monitoring x 30 days) + (\$20 per drug test x 2 tests)]}.
- Mental Health reports that the cost for in-patient treatment per day is \$160. It is assumed that the same rates will apply for in-patient alcohol or drug rehabilitation imposed as a special bond condition.
- It is assumed that the increase in local expenditures for in-patient alcohol or drug rehabilitation will exceed \$96,000 [20 defendants x (\$160 per day x 30 days)].
- It is assumed that the total increase in local expenditures will exceed \$124,900 (\$6,500 + \$22,400 + \$96,000).

#### *Assumptions Relative to Bond Revocation*

- The bill establishes a procedure for bond revocations, including, among other requirements, a hearing and a finding by the court.
- According to the Administrative Office of the Courts, courts currently hold hearings for bond revocations though there is not statutory requirement to conduct such a hearing.
- Any impact to the courts can be accommodated within existing resources.
- The District Attorneys General Conference and the District Public Defenders Conference report that they can handle any impact within their existing resources.

*\*Article II, Section 24 of the Tennessee Constitution provides that: no law of general application shall impose increased expenditure requirements on cities or counties unless the General Assembly shall provide that the state share in the cost.*

## **CERTIFICATION:**

The information contained herein is true and correct to the best of my knowledge.



Krista M. Lee, Executive Director

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